

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FELIX DIAZ,

Plaintiff,

**ANSWER TO COMPLAINT**

-against-

Jury Trial Demanded

CITY OF NEW YORK, POLICE OFFICERS THOMAS  
CALVIN, SHIELD #13693 and COREY HARRIS,  
SHIELD #1499 and UNIDENTIFIED NEW YORK CITY  
POLICE OFFICERS, EMPLOYEES AND AGENTS,

07 CV 2929 (LAP) (FM)

Defendants.

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Defendants City of New York, Police Officer Calvin Thomas and Police Officer  
Corey Harris, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New  
York, for their answer to the complaint, respectfully allege, upon information and belief, as  
follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except  
admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except  
admit that plaintiff purports to bring this action as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except  
admit that plaintiff purports to bring this action and invoke the jurisdiction of the Court as stated  
therein.
4. Deny the allegations set forth in paragraph "4" of the complaint, except  
admit that plaintiff purports to base venue as stated therein.
5. Deny the allegations set forth in paragraph "5" of the complaint.

6. Deny the allegations set forth in paragraph "6" of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint.

8. Deny the allegations set forth in paragraph "8" of the complaint, except admit that the City of New York is a municipal corporation.

9. Deny the allegations set forth in paragraph "9" of the complaint, except admit that the City of New York maintains a police department and respectfully refers the Court to the New York City Charter and the Administrative Code for the relationship between the City of New York and the New York City Police Department.

10. Deny the allegations set forth in paragraph "10" of the complaint, except admit that Thomas Calvin and Corey Harris are employed by the City of New York as a police officers and deny knowledge of information sufficient to form a belief as to the truth of the allegations with respect to unidentified New York City Police Officers, employees and agents.

11. Paragraph "11" states a legal conclusion to which no response is required, except defendants respectfully refer the Court to the New York City Charter and Administrative Code for the duties and functions of the Police Department.

12. Deny the allegations set forth in paragraph "12" of the complaint, except admit that plaintiff purports to proceed as stated therein.

13. Paragraph "13" states a legal conclusion to which no response is required.

14. Deny the allegations set forth in paragraph "14" of the complaint, except admit that on or about October 5, 2004, plaintiff was arrested.

15. In response to the allegations set forth in paragraph “15” of the complaint, defendants repeat and re-allege all the preceding paragraphs of its answer, as if fully set forth herein.

16. Deny the allegations set forth in paragraph “16” of the complaint.

17. Deny the allegations set forth in paragraph “17” of the complaint.

18. Deny the allegations set forth in paragraph “18” of the complaint.

19. Deny the allegations set forth in paragraph “19” of the complaint.

20. Deny the allegations set forth in paragraph “20” of the complaint.

21. Deny the allegations set forth in paragraph “21” of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. In response to the allegations set forth in paragraph “23” of the complaint, defendants repeat and re-allege all the preceding paragraphs of its answer, as if fully set forth herein.

24. Deny the allegations set forth in paragraph “24” of the complaint.

25. Deny the allegations set forth in paragraph “25” of the complaint.

26. Deny the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph “27” of the complaint.

28. Deny the allegations set forth in paragraph “28” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

29. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

30. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

31. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of others, and was not the proximate result of any act of the defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

32. There was probable cause for plaintiff Felix Diaz's arrest, detention and prosecution.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

33. At all times relevant to the acts alleged in the complaint, defendant City of New York, its agents and officials, acted reasonably in the proper and lawful exercise of their discretion. Therefore, the City of New York is entitled to governmental immunity from liability.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

34. Punitive damages cannot be recovered as against the City of New York.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

35. Plaintiff provoked the incident.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

36. Plaintiff may have failed to comply with the conditions precedent to suit.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

37. At all times relevant to the acts alleged by plaintiff, defendants acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

38. Plaintiff's claims may be barred in whole or in part by the applicable limitations period.

**WHEREFORE**, defendants City of New York, Police Officer Calvin Thomas and Police Officer Corey Harris request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 17, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants City of New York, Police  
Officer Calvin Thomas and Police Officer Corey  
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By: 

Suzette Corinne Rivera (SR 4272)  
Assistant Corporation Counsel

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-against-

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UNIDENTIFIED NEW YORK CITY POLICE  
OFFICERS, AGENTS AND EMPLOYEES,

Defendantss.

**ANSWER TO THE COMPLAINT**

***MICHAEL A. CARDOZO***

*Corporation Counsel of the City of New York*

*Attorney for Defendants*

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*Officer Corey Harris*

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*New York, New York 10007*

*Of Counsel Suzette Corinne Rivera*

*Tel: (212) 788-9567*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200..*

*..... Esq.*

*Attorney for .....*